judge of facts to assess the evidence and in so doing accept part of it and reject the rest. It would not necessarily follow as a matter of law, that in the circumstances of the case, the trial court should acquit the appellant at the close of the case for the prosecution by reason of such contradictory evidence in the case for the prosecution.

Reference answered.

Solicitors: *T. Selvarasan & Co.*

PUBLIC PROSECUTOR v. TANGGAAH

[R.Cr.J. (Sharma J.) January 15, 1972]

[Ipoh — Perak Criminal Revision No. 3 of 1972]

Criminal Law and Procedure — Revision — Power of court — Criminal Procedure Code (F.M.S. Cap. 6) s. 323.

Criminal Law and Procedure — Trial — Adjournment — Refusal of — Discretion of magistrate — Criminal Procedure Code (F.M.S. Cap. 6) s. 259.

This case concerned the refusal of a magistrate to grant any further adjournment of a case which had been adjourned seven times.

A notice of revision was issued to the parties concerned by the High Court under the power contained in section 323 of the Criminal Procedure Code.

Held: the grant of an adjournment in a criminal case is a matter of discretion for the magistrate and is governed by the provisions of section 259 of the Criminal Procedure Code. In the circumstances of this case the magistrate was perfectly right in refusing an adjournment and there were no grounds to interfere with his decision.

Per Sharma J.: "... The policy of the law is that criminal cases should be disposed of with the least possible delay. Public interest demands that criminal justice should be swift and sure and that the guilty should be punished while the events are still fresh in the minds of the witnesses and the public and that the innocent should be absolved of the crime as early as is consistent with a fair and impartial trial..... The longer the period is allowed to elapse from the time of arrest to the time the witnesses give evidence, the greater are the chances of confusion and of truth veiled in obscurity.... The question of adjournment of a trial is a matter for the discretion of the court. That discretion, however is not an arbitrary one but has to be exercised judicially and only in cases which come within the terms of this section. The discretion as to adjournment is entirely that of the trial magistrate and is unfettered by any outside authority however high such authority be, irrespective of whether it is the Public Prosecutor or a distinguished counsel. The rank or status of the accused is an irrelevant consideration. Until the matter comes up in revision even the appellate court acts in excess of its jurisdiction if it tells the trial magistrate to postpone a particular case. The discretion is that of the magistrate and of the magistrate alone." (*Post* p. 208 I *I*).

REVISION.

A. Mahendran for the applicant.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the Public Prosecutor.

Sharma J. (delivering oral judgment): Mr. Mahendran saw me in chambers on 10th January, 1972 and complained to me of the difficult position he found himself in as a result of the Bruas magistrate's decision in refusing to grant him an adjournment in arrest case No. 88 of 1970 which the magistrate had fixed for hearing on the 14th January on which date Mr. Mahendran had also to appear in the High Court Kuala Lumpur on the hearing of a criminal appeal. I was told that the date of hearing of the criminal appeal at Kuala Lumpur was notified to Mr. Mahendran in a letter dated the 2nd December, 1971 and that the Bruas magistrate had notified him of the date only on the 17th December, 1971 *i.e.* the criminal appeal at Kuala Lumpur had been fixed much earlier. Mr. Mahendran had written a letter to the Bruas magistrate on the 22nd January, 1971 explaining his difficulty but the magistrate turned down the request for any further adjournment of the Bruas case.

I thought that there might be a likelihood of some injustice resulting to the accused in the Bruas case and therefore after having heard Mr. Mahendran's complaint, I directed the registrar to send for the file in the Bruas case so that I may have an opportunity to go through it and if necessary act in revision under the power contained in section 323 of the Criminal Procedure Code. A notice of revision was consequently issued to the parties concerned and it is that revision which comes up for hearing today.

The brief history of Bruas magistrate's court arrest case No. 88 of 1970 is that the accused was charged under section 379 of the Penal Code. He first appeared in court on the 13th November, 1970 and on that date he pleaded guilty to the charge. The case was, however, adjourned to the 7th December, 1970 for facts and sentence. On the 7th December, however, he withdrew his plea of guilt and the case had to be adjourned to 8th January, 1971. Two days before the date of hearing, *i.e.* on the 6th January, 1971, the accused retained Messrs. Mahendran & Co. and on that very day a letter was sent to the magistrate, Bruas, informing him that 8th January, 1971 was not convenient to Mr. Mahendran who was in charge of the case. Certain dates were suggested in that letter and as a result thereof the case was adjourned to the 18th January, 1971. On that day the accused was absent because of some illness. The matter was then adjourned to the 5th March, 1971 but on that day the counsel for the accused was ill. The case consequently had to be adjourned to the 30th April, 1971 when Mr. Mahendran appeared in court but asked for an adjournment. The reasons for the adjournment given to the magistrate were that Mr. Mahendran had to do a murder case in the High Court at Ipoh on the 3rd May, 1971. On that request the learned magistrate again adjourned the case. I would like to pause here and say that on the 30th April the prosecution was ready, the accused was present and so was his counsel. The murder trial had to commence three days after that day and there was no reason why the hearing could not have proceeded at Bruas in those circumstances. The matter, however, was adjourned to the 14th June, 1971. On that day the accused was present but not his counsel. It, however, so happened that the magistrate was on leave and the case had again to be adjourned to the 20th August, 1971. The hearing commenced on the 20th August, *i.e.* more than nine months after the arrest of the accused and after the case had been adjourned seven times. The case was part-heard on the 20th August, 1971 and ad-

journed to the 25th October, 1971 for continued hearing. On that day the accused did not appear although his counsel did. The court was told that the accused was not well and the case had again to be adjourned to the 8th November, 1971. On that day the accused was again absent and a warrant of arrest was issued against him. Mr. Mahendran did appear in court on the 8th November, 1971 and he knew that the case was fixed for hearing on the 10th December, 1971 but when the case did come up for hearing on the 10th December, 1971 Mr. Mahendran was absent although the accused was present.

I have asked Mr. Mahendran the reason why he did not go to Bruas on the 10th December, 1971 and he has told me that it was because on the 6th December, 1971 the magistrate Batu Gajah had *"requested"* him that he should write to the magistrate Bruas "on behalf of the magistrate Batu Gajah" that the Batu Gajah case which had also been fixed for the 10th December, 1971 should receive priority. Mr. Mahendran says that he did write to the magistrate, Bruas, as a result of the "request" made by the Batu Gajah magistrate. There is no trace of that letter in the Bruas file and Mr. Mahendran admits that at no time did he receive any reply or acknowledgment of that letter. There is no evidence as to what steps the learned counsel took to ascertain whether the request made on behalf of the magistrate Batu Gajah had been granted by the magistrate, Bruas. Mr. Mahendran preferred the forum of the Batu Gajah court and therefore did not go to Bruas on the 10th December, 1971.

The court record does not disclose why the magistrate Bruas did not continue with the hearing on the 10th December, 1971 unless the sheer absence of Mr. Mahendran was that reason. If that were so it was a totally unwarranted reason under the circumstances. The magistrate was too indulgent in again adjourning the case to the 14th January, 1972 and that brings us to the present complaint by the learned counsel.

The grant of an adjournment in a criminal case is a matter of discretion for the magistrate and is governed by the provisions of section 259 of our Criminal Procedure Code, which reads:

"259(i) If, from the absence of a witness or any other *reasonable cause*, it becomes *necessary* or *advisable* to postpone the commencement of or adjourn any inquiry or trial the Court *may*, by *order in writing*, from time to time, postpone or adjourn the same on *such terms* as it thinks fit..." (Emphasis supplied).

I have asked the learned deputy public prosecutor and the learned counsel whether there is any other provision in our Criminal Procedure Code which governs the question of grant of postponements or adjournments and I have been assured that besides section 259 there is no other provision in our Code which is relevant to the question in issue.

After a magistrate has taken cognisance of an offence his powers of postponement and adjournment are regulated entirely by the provisions of section 259(i) of the Criminal Procedure Code. The policy of the law is that criminal cases should be disposed of with the least possible delay. Public interest demands that criminal justice should be swift and sure and that the guilty should be punished while the events are still fresh in the minds of the witnesses and the public and that the innocent should be absolved of the crime as early as is consistent with a fair and impartial trial. The object of section 259 appears to be that the hardship to the parties should be avoided. If the accused is in custody, frequent adjournments will be a harassment to him and from the point of view of the prosecution, time will efface the recollection of facts. The longer the period is allowed to elapse from the time of arrest to the time the witnesses give evidence, the greater are the chances of confusion and of truth veiled in obscurity. The section consequently provides that a postponement or adjournment can be given only in two cases: —

(1) where witnesses are absent, or

(2) for any other reasonable cause.

The question of adjournment of a trial is a matter for the discretion of the court. That discretion, however, is not an arbitrary one but has to be exercised judicially and only in cases which come within the terms of this section. The discretion as to adjournment is entirely that of the trial magistrate and is unfettered by any outside authority, however high such authority be, irrespective of whether it is the Public Prosecutor or a distinguished counsel. The rank or status of the accused is an irrelevant consideration. Unless the matter comes up in revision even the appellate court acts in excess of its jurisdiction if it tells the trial magistrate to postpone a particular case. The discretion is that of the magistrate and of the magistrate alone.

The prevalent practice as I know it and as I have been told exists is that a letter is sent to the magistrate informing him that the date fixed for hearing is not suitable to the counsel or officer appearing. More often than not, the other party is not even aware of such an application or the desire of the party to make such an application until a copy of that letter is received either by the prosecuting officer or the defence counsel. The duty of the magistrate being to exercise the discretion judicially, he is deprived of the opportunity to exercise such discretion by merely having a look at the letter. The proper course is either to lay all the facts before the magistrate and get the consent of the other side before making such an application or to appear in court before the magistrate and make a regular application in open court. In fact the consent alone of the prosecution may be no criteria whether the request made for an adjournment is reasonable or that the circumstances disclosed in the application are such that the magistrate applying his judicial mind to them should unmistakably lean in favour of a postponement as a necessary or advisable consequence thereof.

An adjournment, as already stated by me, can only be granted on the ground of the absence of a witness or "for any other reasonable cause." The general rule is that magistrates should refrain from granting adjournments except in those cases where adjournments are clearly necessitated for the purpose of justice. It should be observed that section 259 further requires that the reasons for the adjournment should be clearly

expressed on record. It is not enough that a reasonable cause exists. Such cause should be stated in the order itself because it is not only the accused who is entitled to know what that cause is but the appellate court itself should also be able to form an opinion as to its reasonableness. The prosecution similarly has a right to know the reason for the grant of an adjournment by the magistrate.

The High Court on revision can in exercise of the power under section 323 of the Criminal Procedure Code set aside the order for adjournment if it is improper but ordinarily the High Court will be most reluctant to interfere and will not interfere if the magistrate has exercised his discretion judicially and in the interests of justice.

The situation in which Mr. Mahendran found himself was a situation created by and brought upon him by Mr. Mahendran himself and I do see no reason for any complaint by him against the magistrate. I always am, as any other judge always is, happy to see members of the Bar come and bring their complaints so that the administration of justice in our courts may improve and its defects, if any, remedied. I, in fact look for and beseech their help, assistance and co-operation. It was purely in that spirit of having the utmost co-operation and moved by the desire that no member of the Bar should have any cause for a just grievance against any presiding officer of a court that I decided to call for this record and issued instructions to the magistrate that until I had decided this matter, the trial of the Bruas case should stand adjourned. I am conscious, sadly and regrettably conscious, of the fact that the expedience of coming directly to the judge to make a complaint and thereby indirectly securing an adjournment of a case may tend to interfere with and retard the speedy and swift dispensation of justice in criminal cases. I have, however, complete faith in the integrity and the responsibility of the Bar and have every hope that this privilege will not be abused. However, should I find any tendency of its abuse, it will undoubtedly be a source of pain and disappointment, but in such an event I will have no hesitation in ordering costs to be paid by the counsel concerned personally. There seems no restriction in ordering costs to be paid to the court in cases where there is a clear abuse of the process of court which results in delayed justice and is inspired by a motive which is anything but oblique.

I might also add that the provisions of section 259 themselves contemplate that the magistrate can himself impose such terms as he deems fit in the grant of adjournments, although such type of an order should be made only where the circumstances are exceptional.

In the circumstances I am of the view that the magistrate was perfectly right in refusing an adjournment and there are no grounds for me to interfere with his decision.

The accused will appear before the magistrate Bruas on the 10th March, 1972 when the hearing will continue.

Order accordingly.

Solicitors: *Mahendran & Co.*

PUBLIC PROSECUTOR v. ECONOMY PRINTERS SDN. BHD.

[A.Cr.J. (Mohamed Azmi J.) January 19, 1972]

[Kuala Lumpur — Selangor Criminal Appeal No. 229 of 1971]

Wages Councils — Employment — Minimum remuneration — Machine operator in printing business — Whether "shop assistant" or "worker" — Wages Regulations (Shop Assistants) Order, 1970, regs. 3(i)(c), 4(i) and Wages Councils Ordinance, 1947.

Criminal Law and Procedure — Statutory Offence — Prosecution — Wages Council Ordinance, 1947.

Interpretation — Regulations — Wordings of — Natural meaning — Interpretation and General Clauses Ordinance, 1948, s. 20.

This was an appeal against the order of acquittal and discharge of the respondent on a charge under section 13(2) of the Wages Councils Ordinance, 1947.

One Kamaruddin, an employee of the respondent, had been working as a full-time machine operator since 1966. In March 1970 Kamaruddin who was over twenty-one years of age was paid a monthly salary of $96.00. The prosecution contended that, by virtue of the provisions in the Wages Regulations (Shop Assistants) Order, 1970 made under the Wages Councils Ordinance, 1947, the employee was being paid less than the statutory minimum of $100 per month as laid down in regulation 4(i) of the said Order.

The learned magistrate dealt with the case on the basis of whether the employee fell within the meaning of "shop assistants" under the Wages Regulations (Shop Assistants) Order 1970. As the definition of "shop assistants" was not contained in either the Wages Regulations (Shop Assistants) Order 1970 or in the Wages Councils Ordinance, 1947, the learned magistrate applied the meaning of "shop assistants" as defined by section 74 of the English Shops Act 1950, and accordingly held that not only the business connection had to be direct but also that it had to do with the serving of customers. Therefore the employee did not fall within the meaning of "shop assistants" and that regulation 3(i)(c) of the Wages Regulations (Shop Assistants) Order 1970 did not apply to him. Accordingly, the learned magistrate acquitted and discharged the respondent without calling for its defence.

The Public Prosecutor appealed.

The main ground of appeal was that the learned magistrate had misdirected himself in law in regard to the interpretation of the provisions of regulation 3(i)(c) of the said Order of 1970.

Held, dismissing the appeal: although regulation 3(i)(c) did apply to the employee, Kamaruddin, he came within the ambit of the provision as a "worker" and not as a "shop assistant". Unless he was a shop assistant, the provision of the Schedule to the Wages Regulations (Shop Assistants) Order had no effect on him on March 1, 1970. As a "worker", they were applicable to him only with effect from March 19, 1970 the date on which the subsidiary legislation was published in the *Gazette*. Under the circumstances, the prosecution had failed to establish a *prima facie* case that for the month of March 1970, Kamaruddin was being paid less than the statutory minimum of $100 per month by the respondent, as laid down in regulation 4(i).

Per Mohamed Azmi J.: "... the duty of the learned magistrate was to interpret the provision of regulation 3(i)(c) of the Wages Regulations (Shop Assistants) Order, 1970, and as the wordings of the said provision are clear, they should be given their natural meaning without resorting to English